IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 06.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.1304 of 2000

1. S.Radhakrishnan

2. S.Lakshminarayanan

3. S.Kalyanasundaram

4. S.Thyagarajan ... Appellants

vs.

1. The District Collector,
Thanjavur.

2. The Special Tahsildar for
Land Acquisition (Adi-Dravidar
Welfare) Department,
Kumbakonam, Thanjavur District. .. Respondents

Appeal under Clause 15 of the Letters Patent against the order dated 18.07.2000 made by the learned single Judge (KGJ) in W.P. No.1430 of 1998. This petition presented to this Court under Article 226 of Constitution of India to issue a Writ of Certiorari to calling for the record of the first respondent made in Na.Ka.100522/97 M1 dated 24.12.1997

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For Appellant : Mr.G.Rajagopalan,
Senior Counsel for Mr.K.K.Senthil

For R-3 : Mr.D.Krishnakumar,
Special Government Pleader.

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J U D G M E N T

P. SATHASIVAM, J.

The above Writ Appeal has been filed against the order of the learned single Judge dated 18.07.2000 made in W.P. No.1430 of 1998.

2. For convenience, we shall refer the parties as arrayed in the Writ Petition.

3. According to the petitioners they own lands in S. Nos.111/1A and 110-2A in Thepperumai Nallur Village, Thirvidaimaruthur Taluk, Thanjavur District. The 2nd respondent/Special Tahsildar for Land Acquisition (Adi-Dravidar Welfare) Department, Kumbakonam, issued Form-I notice under Rule 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979. The said notice was issued to all the petitioners and, on receipt of the same, they gave representation to the second respondent on 23.07.1997, 07.8.1997 and 14.08.1997. Enquiry was conducted on 14.08.1997 and report was sent to the District Collector, Thanjavur, the first respondent herein. Subsequently, the first respondent issued proceedings dated 24.12.1997, directing acquisition of agricultural lands of the petitioners under the Tamil Nadu Acquisition of lands for Harijan Welfare Schemes Act, 1978. In the Writ Petition, the petitioners mainly contended that though they were given opportunity to put forth their representation, the District Collector, who is the authority under the Act, has not given opportunity by supplying copy of the report of the Special Tahsildar and did not conduct the enquiry before ordering publication of notification in the District Gazette in Form-II.

4. The District Collector filed counter affidavit before the learned single Judge, wherein, it is stated that the enquiry under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, was conducted on 14.08.1997 by the Special Tahsildar (ADW), Kumbakonam, after due service of notice in Form-I on the respective land owners. The land owners filed objection petitions through their lawyer during the enquiry. The objection petitions were received from them on 13.05.1997, 10.05.1997, 21.7.1997 and 07.08.1997 prior to the above enquiry. The objections raised by them were considered in detail and proposals under Section 4(1) were submitted by the Special Tahsildar (ADW), Kumbakonam, to the Collector, Thanjavur, in his Rc.No.8/96-A dated 20.10.1997. After considering the objection raised by the land owners to the acquisition and the remarks offered by the Special Tahsildar, Kumbakonam, to the same, the Collector rejected the objection raised by the land owners, accepted the proposal submitted under Section 4(1) by the Special Tahsildar and ordered for publication of notification in Form II in the Special issue of Thanjavur District Gazette, in his proceedings dated 24.12.1997. The notification issued by the Collector in Form-II was published at page-3 of Special issue No.49 of Thanjavur District Gazette dated 29.12.1997. As

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per Section 5 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 31 of 1978, the lands in question, by virtue of publication in the District Gazette, stands vested in the Government, free from all encumbrances on land from the date of publication in the District Gazette.

5. The learned single Judge, by order dated 18.07.2000, after considering the above referred contentions; and after finding that the petitioners were given opportunity to put forth their case and that the District Collector, only after considering the objection of the petitioners as well as the Report of the Special Tahsildar, passed an order for publication of the notification in the District Gazette; dismissed the Writ Petition, hence, the land owners have preferred the present Writ Appeal.

6. Heard Mr.G.Rajagopalan, learned Senior Counsel for the petitioners/appellants and Mr.D.Krishnakumar, learned Special Government Pleader for the respondents.

7. Learned Senior Counsel for the petitioners mainly contended that though the petitioners were granted opportunity to put forth their objections, they were not given copy of the report of the Special Tahsildar and no enquiry was conducted by the District Collector before causing publication in the District Gazette. He also contended that though suitable alternate land of the petitioners is available, the same was not considered by the authorities. According to him, there is a violation of principles of natural justice and the acquisition proceedings are liable to be quashed.

8. Learned Special Government Pleader met the above contentions by placing relevant records.

9. In support of the first contention, learned Senior Counsel heavily relied on a Division Bench decision of this Court reported in 1997 TNLJ 311 (Thirumathi Pushpa Bai Boinsingh v. The District Collector, Tirunelveli Kattabomman District and another). It is also a case of acquisition under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act. The Writ Petitioner therein challenged the order passed by the District Collector, Tirunelveli Kattabomman District, dated 17.2.1997. The said order, dated 17.2.1997, was based on the report filed by the Tahsildar. Before the Tahsildar, the writ petitioner appeared and also gave a written representation. It was the case of the petitioner that she had no other land except the one under acquisition and that in the said land there are coconut yielding trees. A contention was made before the Division Bench that without giving an opportunity to establish the petitioner's case, the Collector passed the order on the basis of the report filed by the Tahsildar. The Division Bench, after observing that the appellant was not given an opportunity before passing order by the Collector, set aside the order, dated 17.2.1997, of the District Collector and directed him to pass fresh orders after giving opportunity of being

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heard to the appellant/writ petitioner. Except the above referred factual details, the Division Bench neither adverted to the relevant provisions of Act 31 of 1978 nor adduced sufficient reasons for arriving at such conclusion based on the provisions therein.

10. Before the learned single Judge, same contention was raised by placing reliance on the above referred Division Bench Judgment. The decision rendered by one of us (P. Sathasivam, J.) in Sannasi vs. The District Collector, Pudukottai (1999 (2) MLJ 506) was also pressed into service before the learned Judge. The said decision also arose under Act XXXI of 1978. The learned Judge, after narrating the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) and the Special Act, viz., Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (XXXI of 1978) as well as the order of the Supreme Court in State of Tamil Nadu v. Ananthi Ammal (AIR 1995 SC 2114), wherein, the State Act (Act 31 of 1978) was upheld except sub-section(1) of Section-11 by the Supreme Court; after observing that the object of passing Special enactment is for speedy action to construct houses for the benefit of Adi Dravidas; after taking note of the specific departure by the Legislature from the Central Act and of the fact that the Division Bench has not adverted to any of the provisions of Act XXXXI of 1978; distinguished the Division Bench Judgment and rejected a similar contention as raised by the learned Senior Counsel for the petitioners.

In the order impugned, the learned single Judge (K.G.J.), after accepting the appreciation and analysis of the Central Act and the State Act by the learned Judge (P.S.J.), ultimately, dismissed the Writ Petition.

11. Mr.G.Rajagopalan, learned Senior Counsel, contended that since the decision reported in 1997 TNLJ 311 has been rendered by a Division Bench, the learned single Judge ought to have followed the same and it is not open for the present Bench, being a co-ordinate Bench, to differ from the Division Bench decision, but the proper course would be to refer the issue to a larger Bench.

12. Though there is no dispute regarding propriety, judicial discipline as well as decorum, let us consider as to whether the decision of the Division Bench reported in 1997 TNLJ 311 is a binding decision or per incuriam.

In the earlier part of our Judgement, we have referred to almost the entire order of the Division Bench. Though we find that there is a direction to the District Collector to give an opportunity to the petitioner before passing orders, as rightly pointed out in the decision reported in 1999 (2) MLJ 506, the Division Bench has not referred to any of the provisions of Act 31 of 1978.

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13. In order to appreciate the above contention, it is useful to refer to the salient features and relevant provisions of the State Act as well as the Central Act. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (XXXI of 1978) was enacted by the Legislature of the State of Tamil Nadu in the year 1978 and it came into force from 24th September, 1979. Even though the said Act was struck down as ultra vires the Constitution of India and offending Article 14 by a Division Bench decision of this Court reported in 96 L.W. 48, subsequently, the Supreme Court reversed the order of this Court, holding that Tamil Nadu Act XXI of 1978 is not ultra vires Article 14 except Sub-section (1) of Section-11, which is valid only to the extent it provides for payment of compensation in lump sum. The rest of the provision of Sub-Section(1) of Section-11 regarding instalments, which is severable, is violative of Article 15 vide: State of Tamil Nadu Vs. Ananthi Ammal, A.I.R. 1995 S.C. 2114 : (1995) 1 S.C.C. 519. The declaration made under Section-2 of the Act makes it clear that the Act is enacted for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular Article 46 of the Constitution. Among other provisions, we are concerned with Section-4 which speaks about power of the District Collector to acquire land for the purpose of Harijan welfare scheme. The word "Harijans" is defined in Section-3 (f) of the Act is as follows:

> "3 (f): "Harijans" means members of the Scheduled Castes and include scheduled Tribes."

Clause (g) defines "Harijan Welfare scheme" as follows:

> "Sec. 3 (g): "Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans".

The power of the District Collector in regard to acquisition of land has been described in Section-4 as follows:

> 4. Power to acquire land:- (1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

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(2) Before publishing a notice under Sub-sec.(1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (a) The District collector may, where he has himself called upon the owner or other person to show cause under Sub-Sec.(2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under Sub-sec.(2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District collector. After considering such report the District Collector may pass such orders as he may deem fit."

14. Other provisions are not relevant for the purpose of deciding the question raised, hence, we are not referring to the same. By virtue of Section-23 of the Act, the Government of Tamil Nadu framed Rules called "Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979" and the same was published in the Tamil Nadu Government Gazette dated 24th September, 1979. Rule 3 speaks about the procedure, which runs as follows:

" 3. Procedure for acquiring land: (i) The District Collector or the officer authorised by him in this behalf shall serve a show cause notice in Form I under Sub-sec.(2) of Sec.4, individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by registered Post (Acknowledgement Due) to the last known address of the owner or any other person interested.

(ii) The District Collector, if, after passing such orders as required by Sub-secs.(2) and (3) of Sec.4 is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette."

Here again, except Rule 3, we are not concerned with other Rules. If the District collector is satisfied for the purpose of implementing any Harijan Welfare Scheme and land is required for the same, it is open for him to acquire the said land by publishing in the Government Gazette a notice to the effect that he has decided to acquire the land. As per Sub-

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sec.(2) of Section-4, before publication of the notice under Sub-section (1), either the District Collector or any officer authorised by him, call upon the owner or any other interested person to show-cause why it should not be acquired. Sub-section 3(a) gives power to the District Collector to pass such orders as he may deem fit on the cause so shown and according to clause (b) of Sub-section(3) of Section-4, the officer, after calling upon the owner or other persons to show cause under Sub-sec.(2), shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. Thereafter, the Collector, after considering the report of the officer so authorised, is to pass orders as he deems fit.

15. There is no dispute that the petitioners were given show cause notice by the Special Tahsildar (Officer authorised by the District Collector) inviting their remarks or objections with regard to the proposed acquisition for the purpose of Harijan Welfare Scheme. It is also the case of the petitioners that they submitted their objections to the proposed acquisition. Their grievance is that on receipt of the report from the Special Tahsildar as enunciated in Sub-sec.(3) (b) of Section-4, the District Collector ought to have sent a copy of the said report to the landowners as well as the persons interested. It is also their contention that on receipt of the report from the Special Tahsildar, the District Collector ought to have provided one more opportunity to the landowners by forwarding a copy of the said report to them to put forth their contentions.

16. We have already extracted Section 4 of the Act, particularly clause (b) to Sub-sec.(3) of Section-4. As stated earlier, there is no dispute that the petitioners were given show cause notices by the Special Tahsildar (Officer authorised by the District Collector) and that they submitted their objections before the said officer. As per clause (b) to Sub-section (3) of Section-4, a duty is cast on the District Collector to pass appropriate orders after considering the report of the Special Tahsildar. In other words, there is no specific provision for furnishing copy of the report of the Special Tahsildar or making any further enquiry as claimed by the petitioners. Though the learned Judges, in the said decision viz., Thirumathi Pushpa Bai Bainsingh vs. District Collector, Tirunelveli (1998) 1 CTC 281, set aside the order of the Collector and directed him to give an opportunity to the petitioner therein, in the light of any such provision in Section-4 (3) (b) and in the absence of any discussion by the learned Judges with reference to the above mentioned provision, with respect, we are of the view that the said decision has to be confined only to the facts in that case. In this regard, it is to be noted that in order to ameliorate the grievances of thousands of Harijans in this State, the Government of Tamil Nadu enacted Tamil Nadu Act XXXI of 1978. As we have already adverted to, the object of the Act is for giving effect to the policy of the State towards securing the principles laid down in Part IV, and in particular Article 46 of the Constitution of India. Since the State Legislature thought that recourse to the Central

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Act, viz., Land Acquisition Act, 1894, would be a time consuming process and it is very difficult to implement the Harijan Welfare Schemes for the members of the Scheduled Castes and Scheduled Tribes, they enacted the present Act, namely, Act XXXI of 1978. Further, all the provisions of the Tamil Nadu Act 31 of 1978 were considered by their Lordships of the Supreme Court in State of Tamil Nadu V. Ananthi Ammal A.I.R. 1995 S.C. 2114: (1995) 1 S.C.C. 519, their Lordships have considered Section-4 as well as Sub-sections.(1), (2), (3) (a) and (b) to Section-4 and ultimately upheld those provisions of the Act except Sub-Section(1) of Section-11. It is also clear that the provisions of Section-4 substantially encapsulate the provisions of Sections-4 to 6 of the Land Acquisition Act (Central Act). As observed by their Lordships in Ananthi Ammal's case, A.I.R. 1995 S.C. 2114, the only major difference being that, under the Tamil Nadu Act, it is the District Collector and not the State Government (as under Land Acquisition Act) who must be satisfied that the land is required to be acquired. After holding so, their Lordships concluded that "it does not appear to us that this is a provision (Sec.4 of Tamil Nadu Act) which is unreasonable or arbitrary".

17. In the Central Act, after enquiry under Section.5-A of that Act, the Land Acquisition Officer has to simply forward the entire proceedings including the objection of the landowners and also the views of the requisitioning body to the Government for taking appropriate decision and making declaration under Section-6. After completion of enquiry under Section.5-A of the Central Act, no further enquiry is contemplated in the Act at the hands of the State Government before making declaration under Section-6. Herein, in the Tamil Nadu Act 31 of 1978, the Special Tahsildar sends show cause notice to the land owners and the persons interested, receives their objections and makes a report to the District collector for passing appropriate orders under clause (b) to Sub-section (3) of Section-4. As per the above provisions in Tamil Nadu Act 31 of 1978, it is not mandatory on the part of the Collector to send a copy of the report of the Special Tahsildar and conduct further enquiry as contended by the learned Senior Counsel for the petitioners. When there is a specific omission by the Legislature, taking note of the object in enacting the legislation (Act 31 of 1978), it is not open to the Court to give a different meaning what is not actually intended or included in the statute. In this regard, we are in entire agreement with the view expressed in 1999 (2) MLJ 506 and unable to accept the argument of the learned Senior Counsel for the petitioners. For the same reasons, we are also satisfied that there is no need to refer the issue to a larger Bench as claimed by Mr.G.Rajagopalan.

18. Learned Senior Counsel has relied on the following decisions of the Supreme Court reported in,

(a) AIR 1972 SC 136 (State Bank of India v. R.K.Jain);
(b) AIR 1991 SC 471 (Union of India v. Mohd. Ramzan Khan); and
(c) AIR 1994 SC 1074 (Managing Director, ECIL v. B.Karunakar),

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and contended that even if there is no provision in the Act, in view of the compulsory nature of acquisition, adequate opportunity must be given to the land owners.

19. In the light of the said contention, we verified the factual details in the above three cases. First of all, those cases relate to service matters. Secondly, Court cannot infer something when there is no such provision in the Act and issue direction to the authority to do something, which is not authorised or permitted under the Statute. In the light of the same, we are of the view that there is no need to refer to the above cited decisions.

20. Coming to the next argument that alternate land of the petitioners is available and a suggestion/representation was forwarded to the opinion of the Government, first of all, as per the Tamil Nadu Act, all decisions have to be taken only by the District Collector. Secondly, the Report shows that the alternate land suggested by the petitioners is adjacent to the graveyard. Though it is pointed out that even the beneficiaries/Adi Dravidas have no objection in constructing houses in the suggested land, which is nearer to the graveyard, it is not for this Court to issue direction to the authorities to accept the same. It is not known as to what made the beneficiaries to accept the alternate site, particularly when the land is nearer to the graveyard. Further, graveyard in villages is not like the one in a City, wherein, sufficient safeguards are there. In such circumstances, we are of the view that acceptance of alternate land is left to the discretion of the District Collector, who is the competent authority. We refrain from making any direction or comment on the suggestion of the petitioners.

21. In the light of what is stated above, we are in entire agreement with the conclusion arrived at by the learned single Judge and we do not find any error or infirmity or valid ground for interference. Writ Appeal is devoid of merits and the same is dismissed.

JI.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The District Collector, Thanjavur.

2. The Special Tahsildar for Land Acquisition (Adi-Dravidar Welfare) Department, Kumbakonam, Thanjavur District.

+ 1 CC to the Government Pleader SR NO 17221.
+ 1 CC To Mr.K.K.Senthil, Advocate, SR NO.17072.

Pre Delivery Judgment in
Writ Appeal No.1304/2000.

AK(CO)
RVL 12.04.2006

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